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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. MARIO GABRIEL, Defendant and Appellant.	H037227 (Monterey County Super. Ct. Nos. SS091125 & SS101945)

Defendant Mario Gabriel was convicted by plea in one case (SS091125) of one count of possession of a concealed weapon in violation of Penal Code section 12025, subdivision (a)(2),[1] with admitted allegations that he committed the offense for the benefit or at the direction of a criminal street gang (§ 186.22, subd. (b)(1)) and that he was not the registered owner of the weapon (§ 12025, subd. (b)(6)). While on probation in that case, Gabriel was convicted by plea in a second case (SS101945) of one count of child endangerment in violation of section 273a, subdivision (a) and one count of evading an officer while driving against traffic in violation of Vehicle Code section 2800.4. He also admitted to having suffered a prior strike within the meaning of section 1170.12, his conviction in the first case. In addition, the court found him in violation of probation. The court sentenced Gabriel in both cases to a combined total of seven years in prison,

[1] Further unspecified statutory references are to the Penal Code.

consisting of five years, four months in the first case per the plea bargain and one year, eight months, consecutive, in the second case. The court imposed in the second case, among other fines and fees, a restitution fine under section 1202.4, subdivision (b) and it awarded pre-sentence conduct credits under section 4019 in both cases.

On appeal, Gabriel challenges the restitution fund fine in the second case calculated per the discretionary statutory formula at section 1202.4, subdivision (b)(2), as reflected in the clerk's minutes and the abstract of judgment. He contends that this amount differs from what the court orally pronounced. He also contends on equal protection grounds that he is entitled to additional conduct credit in both cases based on legislative changes to section 4019, which are expressly operative to crimes committed on or after October 1, 2011, a date subsequent to his crimes.

Finding the oral pronouncement with respect to the amount of the restitution fine in the second case to be ambiguous, we vacate the $2,000 restitution fine, as reflected in the minutes and abstract of judgment, and remand for the superior court to clarify what it intended. We reject Gabriel's contention concerning his entitlement to additional conduct credit. We accordingly remand for a determination of the amount of the restitution fine in the second case and otherwise affirm the judgments.

STATEMENT OF THE CASE

I. *Factual Background*[2]

A. *Case No. SS091125, the First Case*

On April 6, 2009, "two [Salinas] police officers saw defendant approach a van while holding his front waistband and making confrontational gestures. The officers

[2] As the convictions here resulted from pleas, we take the facts of the crimes from the preliminary hearing transcript in the second case, probation reports, and our prior published opinion in the first case, *People v. Gabriel* (2010) 189 Cal.App.4th 1070, which concerned the unrelated issue of probation conditions and of which we take judicial notice on our own motion.

suspected that defendant was armed based on his behavior and body language. When they attempted to detain defendant, he fled. During the ensuing chase, the officers saw defendant throw a gun. The officers eventually apprehended defendant and recovered the gun." (*People v. Gabriel, supra,* 189 Cal.App.4th at p. 1072.)

B. *Case No. SS101945, the Second Case*

On August 7, 2010, while defendant was on probation for his conviction in the first case, a California Highway Patrol Officer attempted to detain him in a traffic stop for speeding. Defendant initially pulled over, but then made a U-turn and took off at speeds exceeding 90 miles per hour on Highway 68. He exited the highway, ran a stop sign, and crashed into a 10-foot high dirt embankment. But he put the car in reverse and got on Highway 68 again, at one point traveling the wrong way before exiting onto a city street. He continued to travel at speeds over 90 miles per hour on city streets and ran another stop sign. Then he got onto Highway 101, where he accelerated to 110 miles per hour, veered into oncoming traffic, and again traveled against the direction of traffic for some 200 feet, all the while being chased by authorities.

When his car came to a stop, officers tried to detain defendant, but he fled on foot. Officers chased him and eventually took him into custody. When they inspected his car, officers found defendant's 16-month old son strapped into a child seat in the back seat of the car. The child had suffered seat belt abrasions. They later discovered that defendant's 5-year old stepson had also been in the car but the boy got out under his own power when the car finally stopped.

II. *Procedural Background*

In the first case (SS091125), Gabriel was charged by information filed July 30, 2009, with possessing a concealed firearm in violation of section 12025, subdivision (a)(2) (count one); carrying a loaded firearm on his person in violation of section 12031, subdivision (a)(1) (count two); street terrorism in violation of section 186.22, subdivision

(a) (count three); and misdemeanor resisting arrest in violation of section 148, subdivision (a)(1) (count four). As to counts one and two, the information also alleged that defendant was an active participant in a street gang within the meaning of section 12025, subdivision (b)(3), that the offenses were committed for the benefit or at the direction of a criminal street gang in violation of section 186.22, subdivision (b)(1), and that he was not the registered owner of the gun within the meaning of section 12025, subdivision (b)(6).

On January 22, 2010, Gabriel "pleaded guilty to having a concealed firearm on his person [count one] and admitted the special allegations that he was not the registered owner of the firearm, and that the commission of the offense was for the benefit of, or at the direction of, or in association with a criminal street gang." (*People v. Gabriel supra*, 189 Cal.App.4th at p. 1072, fn. 1, citations omitted.) On February 4, 2010, the trial court suspended sentence and placed defendant on probation for three years, dismissing the remaining charges and allegations.

In the second case (SS101945), after being bound over for trial, defendant was charged by information filed August 30, 2010, with two counts of child endangerment in violation of section 273a, subdivision (a) (counts one and two); evading an officer while driving against traffic in violation of Vehicle Code section 2800.4 (count three); reckless evasion of an officer in violation of Vehicle Code section 2800.2, subdivision (a) (count four); misdemeanor resisting arrest in violation of section 148, subdivision (a)(1) (count five); and misdemeanor driving on a suspended license in violation of Vehicle Code section 14601.5, subdivision (a) (count six). The information further alleged with respect to the felony charges that defendant suffered a prior strike within the meaning of section 1170.12, the conviction in the first case. Based on the alleged commission of these offenses, a notice of probation violation was filed on August 19, 2010 in the first case.

On February 9, 2011, in a negotiated disposition, Gabriel pleaded no contest to one count of child endangerment and the charge of evading an officer while driving against traffic. He also admitted the prior strike. Based on the pleas, the court found defendant in violation of probation in the first case.

On April 8, 2011, the court imposed sentence in both cases. In the second case, the court imposed a four-year term on the child endangerment charge (the midterm, doubled), and a consecutive 16-month sentence on the charge for evading an officer while driving against traffic (one third the mid-term, doubled), for the agreed upon total term of five years, four months. In the first case, the court imposed consecutive sentences on the probation violation, consisting of eight months on the weapons charge (one third the mid-term) and one year for the gang enhancement, these twenty months to be served consecutively to the five year, four month sentence in the second case. The total sentence in both cases combined was thus seven years.

When addressing fines and fees in the second case (SS101945), the court said it was imposing "a fine of $200 for each year of incarceration pursuant to 1202.4(b), an additional $200 suspended pursuant to 1202.45," referring to the restitution fund fine at section 1202.4, subdivision (b) and the parole revocation fine at section 1202.45, respectively. The court did not state the specific amount of the respective fines it was imposing. Nor do the clerk's minutes state specific amounts for these fines, instead indicating that defendant was ordered to pay "a state restitution fine of $200 multiplied by the number of years of imprisonment, multiplied by the number of convicted Felony counts. (PC 1202.4(b)(2))," referring to the formula provided at that subdivision, and an "additional restitution fine in same amount assessed pursuant to PC 1202.4(b). This restitution fine shall be suspended unless parole is revoked (PC 1202.45)." The abstract of judgment shows these two fines at $2,000 each, which is per the formula at section

1202.4, subdivision (b)(2), with the number of years of incarceration rounded down.[3] ($200 x (5 years) x (2 counts) = $2,000)

With respect to pre-sentence credits, the court awarded in the first case (SS091125A) in which the crime was committed on April 6, 2009, actual credits of 95 days and 46 days of conduct credits, for a total of 141 days. In the second case (SS101945A) in which the crime was committed on August 7, 2010, the court awarded actual credits of 235 days plus 116 days of conduct credits, for a total of 351 days.

Gabriel appealed from the judgment of conviction, challenging the sentence or matters occurring after the plea but not affecting its validity.[4] (Cal. Rules of Court, rule 8.304(b).)

DISCUSSION

I. *The Restitution Fund Fine*

Gabriel contends that by its oral pronouncement, the court did not impose a restitution fine in the second case under the formula provided at section 1202.4, subdivision (b)(2). He argues that the oral pronouncement dictates a fine of $1,000 instead of $2,000 per the formula.[5] As noted, the court said it was imposing "a fine of $200 for each year of incarceration pursuant to 1202.4(b)," which states only part of the formula provided at section 1202.4, subdivision (b)(2) because this statement excludes

[3] The abstract shows that the restitution fine imposed in the first case was $200, which defendant does not challenge.

[4] A notice of appeal was not timely filed but we granted defendant's motion for relief from default.

[5] Although Gabriel does not expressly say so, this challenge likewise affects the parole revocation fine under section 1202.45, which is to be in the same amount as the restitution fine under section 1202.4, subdivision (b) but suspended unless and until parole is revoked.

the part of the formula requiring the final multiplication by the number of counts, in this case, two.

Section 1202.4 provides that when a person is convicted of a crime, the court must order the defendant to pay a restitution fine unless the court finds extraordinary and compelling reasons for not doing so. (§ 1202.4, subd. (a).) Former section 1202.4, subdivision (b)(1) provided that the restitution fine mandated upon the conviction of a felony crime must be set at the discretion of the court, commensurate with the seriousness of the offense but not less than $200 and not more than $10,000.[6] Subdivision (b)(2) provided that "[i]n setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted." Subdivision (d) provides that in setting the fine in excess of the felony minimum, the court shall consider any relevant factors and it lists several nonexclusive factors, including the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any pecuniary or intangible losses, and the number of crime victims. The sentencing court has wide discretion in setting the amount of the restitution fine and the court is not required to make express findings or state its reasons on the record. (*People v. Urbano* (2005) 128 Cal.App.4th 396, 405-406; *People v. Gangemi* (1993) 13 Cal.App.4th 1790, 1798.)

The crux of defendant's argument here is that because the trial court's oral pronouncement of judgment at sentencing controls over the minutes or abstract of judgment prepared by the clerk in a ministerial act (*Gabriel*, *supra*, 189 Cal.App.4th at

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[6] Section 1202.4, subdivision (b) was amended in 2011 to increase the minimum and maximum amounts of the fine but the prior version of the statute is applicable in this case. (Stats. 2011, ch. 358, § 1.)

p. 1073; *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2), and because the court has discretion in setting the restitution fine, the fine should be $1,000 per the court's exact words, not $2,000 per the statutory formula as reflected in the minutes and the abstract of judgment. Respondent counters that although the court did not verbally reference the entire statutory formula when setting the fine, it is clear that the court intended to use the entire formula but only referenced it by shorthand, with nothing in the record to demonstrate an intention to depart from the formula.

We acknowledge that the court's oral pronouncement, as reflected in the reporter's transcript, does not state the entire formula provided at section 1202.4, subdivision (b)(2) and that the $2,000 fine reflected in the minutes and abstract, per the formula, thus does not exactly reflect the equation the court appears to have verbally described. But we suspect that the court's only partial reference to the statutory formula was inadvertent or shorthand. And unfortunately, the court did not specify an amount of the fine to be imposed, which might have shed light on the court's actual intention. Under these circumstances in which we perceive an ambiguity in what the court intended, the most appropriate course of action is to remand the matter for a recalculation of the restitution fine under section 1202.4, subdivision (b) and the parole revocation fine in like amount under section 1202.45, suspended. Our disposition will so order.

II. *Defendant is Not Entitled to Additional Conduct Credits*

Gabriel contends that principles of equal protection entitle him to additional conduct credits in both cases. His contention is that the statutory changes to section 4019 and section 2933, expressly operative October 1, 2011, apply retroactively, in effect, so as to entitle him to one-for-one conduct credits under the current version of section 4019 rather than the one-for-two he was awarded in each case.

A criminal defendant is entitled to accrue both actual pre-sentence custody credits under section 2900.5 and conduct credits under section 4019 for the period of

incarceration prior to sentencing. Additional conduct credits may be earned under section 4019 by performing additional labor (§ 4019, subd. (b)) and by a prisoner's good behavior. (§ 4019, subd. (c).) In both instances, the section 4019 credits are collectively referred to as conduct credits. (*People v. Dieck* (2009) 46 Cal.4th 934, 939, fn. 3.) The court is charged with awarding such credits at sentencing. (§ 2900.5, subd. (a).)

Before January 25, 2010, conduct credits under section 4019 could be accrued at the rate of two days for every four days of actual time served in pre-sentence custody. (Stats. 1982, ch. 1234, § 7, p. 4553 [former § 4019, subd. (f)].) Effective January 25, 2010, the Legislature amended section 4019 in an extraordinary session to address the state's ongoing fiscal crisis. Among other things, Senate Bill No. 3X 18 amended section 4019 such that defendants could accrue custody credits at the rate of two days for every two days actually served, twice the rate as before *except* for those defendants who were required to register as a sex offender; those, like Gabriel, committed with respect to the first case for a serious felony (as defined in § 1192.7); and those, like Gabriel, with respect to the second case with a prior conviction for a violent or serious felony.[7] (Stats. 2009-2010, 3d Ex.Sess., ch. 28, §§ 50, 62 [former § 4019, subds. (b), (c), & (f)].) For these persons, conduct credit under section 4019 accrued at the same rate as before despite the January 25, 2010 amendments. (Former § 4019, subds. (b)(2) & (c)(2).) These amendments to section 4019 effective January 25, 2010, did not state whether they were to have retroactive application.

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[7] For Gabriel, his felony conviction in the first case (SS091125) involved an admitted violation of section 186.22—that the underlying offense of carrying a concealed weapon (§ 12025, subd. (a)(2)) was for the benefit or at the direction of a criminal street gang (§ 186.22, subd. (b)(1)). Under section 1192.7, subdivision (c)(28), this means the commitment is for a serious offense, and is a strike. This conviction in the first case for a serious offense also furnishes the prior serious felony conviction with respect to the second case (SS101945), an admitted allegation.

California courts subsequently divided on the retroactive application of the amendments to section 4019, effective January 2010, and the issue currently remains pending with the California Supreme Court for resolution. (See, *People v. Brown* (2010) 182 Cal.App.4th 1354, rev. granted June 9, 2010, S181963, and related cases.)[8]

Then, effective September 28, 2010, section 4019 was amended again to restore the less generous pre-sentence conduct credit calculation that had been in effect prior to the January 2010 amendments, eliminating one-for-one credits. (Stats. 2010, ch. 426, § 2.) The express provisions treating differently those defendants who are subject to sex-offender registration requirements, and those, like Gabriel, committed for a serious felony or, also like Gabriel, with a prior conviction for a violent or serious felony, were also eliminated. (*Ibid.*) At the same time, and by the same legislative action, section 2933, previously applicable only to worktime credits earned while in state prison, was amended to encompass pre-sentence conduct credits for those defendants ultimately sentenced to state prison (Stats. 2010, ch. 426, § 1 [former § 2933, subd. (e).) In other words, as of September 28, 2010, section 2933 instead of section 4019 applied to the calculation of pre-sentence conduct credits for those defendants sentenced to a prison term, with an exception. This amendment to section 2933 provided for one-for-one pre-sentence conduct credits, more generous than those simultaneously provided under section 4019, but excluded those inmates required to register as sex offenders and those, like Gabriel, committed for a serious felony or those, like Gabriel, with a prior serious or violent felony conviction. Under this version of section 2933, subdivisions (e)(1) and (e)(3), these prisoners remained subject to an award of pre-sentence conduct credits under

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[8] Our own view is that the January 2010 amendments to section 4019 were not retroactive, even in the face of an equal protection challenge analytically akin to that mounted here. (See, *People v. Hopkins* (2010) 184 Cal.App.4th 615, 627-628, review granted June 21, 2010, S183724 [briefing deferred pending decision in *People v. Brown*, *supra*].)

section 4019, accruing at the less generous one-for-two rate. (*Ibid.*) By its express terms, the newly created section 4019, subdivision (g), declared these September 28, 2010 amendments applicable only to prisoners confined for a crime committed on or after that date, expressing legislative intention that they have prospective application only. (Stats. 2010, ch. 426, § 2.)

This brings us to legislative changes made to sections 4019 and 2933 in 2011, as relevant to Gabriel's equal protection challenge. These statutory changes, among other things, effectively made section 4019 again applicable to all prisoners for purposes of the calculation of pre-sentence conduct credits, eliminating this element of section 2933 that was in place from September 28, 2010 to September 27, 2011 only, and reinstituted one-for-one pre-sentence conduct credits for all prisoners. (§§ 2933 & 4019, subds. (b)(c) & (f).) These changes to section 4019 were made expressly applicable to crimes committed on or after October 1, 2011, the operative date of the amendments, again expressing, in this respect, legislative intent for prospective application only.[9] (§ 4019, subds. (b), (c), & (h).)

As noted, Gabriel committed the crime in the first case (SS091125) on April 6, 2009, was convicted on January 22, 2010, and was sentenced to prison on April 8, 2011. Under the law in effect on any of these dates, he was properly awarded conduct credits on a one-for-two basis (95 days actual credit and 46 days conduct credit).[10] As to the second case (SS101945A), Gabriel committed the crimes on August 7, 2010, was

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[9] These changes took place by two separate amendments. (Stats. 2011, ch. 15, § 481; Stats. 2011, ch. 39, § 53.) Section 4019 was also amended a third time in 2011, in respects not relevant here. (Stats. 2011, 1st Ex. Sess., ch. 12, § 35.)

[10] This is because as to the dates of conviction and sentencing, Gabriel fits into that category of persons committed for a serious felony or with a prior conviction for a violent or serious felony, who were treated less generously as to an award of pre-sentence conduct credits under various iterations of the statute operative January 25, 2010 through September 30, 2011.

convicted on February 9, 2011, and was sentenced on April 8, 2011. Similarly, under the law in effect on any of these dates, he was properly awarded conduct credits on a one-for-two basis (235 days actual credit and 116 days conduct credit).[11]

Notwithstanding the express legislative intent that the changes to section 4019, operative October 1, 2011, are to have prospective application only, Gabriel contends, on equal protection grounds, that he is entitled to the reinstituted one-for-one conduct credits implemented by those changes. He argues that *In re Kapperman* (1974) 11 Cal.3d 542, 544-545 (*Kapperman*) compels this result, contending that it held that a new statute that provides for pre-sentence credits for prison inmates is fully retroactive to all prisoners by virtue of the equal protection clause. He also cites *People v. Sage* (1980) 26 Cal.3d 498, 507-508 (*Sage*), and urges that it held that felons were similarly situated to all other jail inmates, implicitly overruling *In re Stinette* (1979) 94 Cal.App.3d 800 (*Stinette)*, and that the then current version of section 4019 was violative of equal protection because it denied conduct credit to felons who were sentenced to prison while making such credits available to other jail inmates.

Preliminarily, to succeed on an equal protection claim, a defendant must first show that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner. In considering whether state legislation is violative of equal protection, we apply different levels of scrutiny to different types of classifications. (*People v. Wilkinson* (2004) 33 Cal.4th 821, 836-837.) Where, as here, the statutory distinction at issue neither "touch[es] upon fundamental interests" nor is based on gender, there is no equal protection violation "if the challenged classification bears a rational relationship to a legitimate state purpose. [Citations.]" (*People v. Hofsheier* (2006) 37 Cal.4th 1185, 1200 (*Hofsheier*); see also *People v. Ward* (2008) 167 Cal.App.4th 252, 258 [rational basis review applicable to equal protection challenges based on sentencing

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11 See prior footnote as to all three dates.

disparities].) Under the rational relationship test, " ' " 'a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. [Citations.] Where there are "plausible reasons" for [the classification], "our inquiry is at an end." ' " ' " (*Hofsheier, supra,* at pp. 1200-1201, italics omitted.)

In *Kapperman*, the Supreme Court reviewed a provision (then-new § 2900.5) that made actual custody credits prospective, applying only to persons delivered to the Department of Corrections after the effective date of the legislation. (*Kapperman, supra*, 11 Cal.3d at pp. 544-545.) The court concluded that this limitation violated equal protection because there was no legitimate purpose to be served by excluding those already sentenced, and extended the benefits retroactively to those improperly excluded by the Legislature. (*Id.* at p. 545.) But *Kapperman* is distinguishable from the instant case because it addressed *actual* custody credits, not *conduct* credits. Conduct credits must be earned by a defendant, whereas custody credits are constitutionally required and awarded automatically on the basis of time served. A further significant distinction may be drawn between *Kapperman* and this case, in that the liberalization of credit at issue in *Kapperman* applied to prisoners regardless of the offense for which they were imprisoned, whereas the change here affects three well defined sub-classes of offenders: those required to register as sex offenders; those committed for a serious felony, as defined as defined in section 1192.7; or those with a prior serious felony, as defined in section 1192.7, or a prior violent felony, as defined in section 667.5. (*People v. Olague* [H036888], 2012 Cal.App. Lexis 537, * 16 (May 7, 2012).)

Sage is likewise inapposite, because it involved a prior version of section 4019 that allowed pre-sentence conduct credits to misdemeanants, but not felons. (*Sage, supra*, 26 Cal.3d at p. 508.) The high court found that there was neither a "rational basis

for, much less a compelling state interest in, denying presentence conduct credit to detainee/felons." (*Ibid*.) But here, assuming without deciding that defendant is similarly situated with those receiving the benefit of the legislative changes, the purported equal protection violation is temporal, rather than based on defendant's status as a misdemeanant or felon. (*People v. Floyd* (2003) 31 Cal.4th 179, 189-191 [" 'punishment lessening statutes given prospective application' " on a certain date " 'do not violate equal protection' "].) The question in this case, which is not answered by *Sage* given its holding, is whether there is a rational basis for the different treatment vis a vis conduct credits.

One of section 4019's principal purposes is to motivate or reward good behavior while in pre-sentence custody, and it is impossible to influence behavior after it has occurred. The fact that a defendant's conduct cannot be retroactively influenced provides a rational basis for the Legislature's express intent that the October 2011 amendments to section 4019 apply prospectively. (*Stinette, supra,* 94 Cal.App.3d at p. 806 [prospective only application of provisions of Determinate Sentencing Act (§ 1170 et seq.) upheld over equal protection challenge]; *In re Strick* (1983) 148 Cal.App.4th 906, 912-913 [prospective only application of statutory changes designed to incentivize productive work and good conduct of prison inmates upheld over equal protection challenge].) This is so even if an inmate has already earned the maximum amount of good conduct credits available under the applicable former version of the statute and is only claiming entitlement to *additional* conduct credits for the same good behavior that earned him those conduct credits in the first place. What illustrates this point is that unquantifiable and unidentifiable group of inmates who did not earn good conduct credits in the same period of time as defendant, but who might have behaved better given enhanced incentives.

We acknowledge that the specific purpose of the amendments to section 4019 that became operative October 1, 2011, was to address the "state's fiscal emergency by effectuating an earlier release of a defined class of prisoners, thereby relieving the state of the cost of their continued incarceration and alleviating overcrowding in county jail facilities. [Citations.]" (*People v. Borg* (2012) 204 Cal.App.4th 1528, 1537-1539 [amendments do treat similarly situated classes of persons disparately but the legislation nevertheless bears a rational relationship to a legitimate state purpose].) But we agree with our colleagues in Division One of the First Appellate District that "[r]educing prison populations by granting a prospective-only increase in conduct credits strikes a proper, rational balance between the state's fiscal concerns and its public safety interests." (*Id.* at p. 1539; *People v. Olague, supra*, at pp. *20-*21.)

We accordingly reject Gabriel's contention that he is entitled to additional conduct credits based on amendments to section 4019, operative October 1, 2011.

DISPOSITION

The $2,000 restitution fine imposed in case number SS101945 under section 1202.4, subdivision (b), and the parole revocation fine imposed in like amount but suspended under section 1202.45, are vacated. The matter is remanded for a recalculation of these fines. The judgments are otherwise affirmed. In the event the restitution and parole revocation fines are ultimately imposed in a sum different than the $2,000 previously imposed for each but vacated, the clerk of the superior court is directed to amend the abstract of judgment to reflect any such modifications to the judgment of conviction in case number SS101945, and to transmit any amended abstract to the Department of Corrections and Rehabilitation.

Duffy, J.*

WE CONCUR:

Rushing, P.J.

Premo, J.

* Retired Associate Justice of the Court of Appeal, Sixth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.